

17:20:54

1

UNITED STATES DISTRICT COURT

2

WESTERN DISTRICT OF NEW YORK

3

4

5

- - - - - X

UNITED STATES OF AMERICA) 19CR227

6

Plaintiff)

vs.

7

Buffalo, New York

PETER GERACE, JR.) October 27, 2021

8

Defendants. 10:30 a.m.

- - - - - X

9

MOTION ARGUMENT**Transcribed from an Electronic Recording Device**

10

11

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MICHAEL J. ROEMER
UNITED STATES MAGISTRATE JUDGE

12

13

BRENDAN T. CULLINANE, ESQ.

14

JOSEPH M. TRIPI, ESQ.

Assistant United States Attorneys

15

138 Delaware Avenue

Buffalo, New York 14202

16

17

STEPHEN M. COHEN, ESQ.**HARMONY A. HEALY, ESQ.**

18

Hogan Willig

2410 North Forest Road

19

Suite 301

Amherst, New York 14068

20

-and-

JOSEPH M. LATONA, ESQ.

21

42 Delaware Avenue

Suite 700

22

Buffalo, New York 14202

23

B. Macaluso - USPO

24

COURT REPORTER: Karen J. Clark, Official Court Reporter
Karenclark1013@AOL.com

25

100 State Street
Rochester, New York 14614

P R O C E E D I N G
* * *

THE CLERK: United States District Court for the Western District of New York is now in session. The Honorable Michael J. Roemer presiding.

Appearing we're here on the matter of the United States versus Peter Gerace, case No. 19CR227, for a motion. Counsel for the government, please state your name for the record.

MR. CULLINANE: Good morning, your Honor. Brendan Cullinane and Joseph Tripi on behalf of the United States.

THE CLERK: Counsel for the Defendant, please state your name for the record.

MR. COHEN: Good morning, Steven M. Cohen and Harmony Healy, Hogan Willig here for the Defendant.

MAGISTRATE JUDGE ROEMER: Don't forget Mr. LaTona.

MR. COHEN: And Joseph LaTona.

THE CLERK: Thank you.

MAGISTRATE JUDGE ROEMER: Good morning. We're her for oral argument on the defendant's motion to

1

17:22:32 2 modify his conditions of release. Are we ready to go.

17:22:36 3 MR. COHEN: We are, your Honor.

17:22:37 4 MR. CULLINANE: Yes, your Honor.

17:22:38 5 MAGISTRATE JUDGE ROEMER: Mr. Cohen, what I

17:22:40 6 can discern, you want, basically, three things, right?

17:22:44 7 You want to go from home detention to curfew, right.

17:22:48 8 MR. COHEN: That's correct, sir.

17:22:48 9 MAGISTRATE JUDGE ROEMER: You want the

17:22:49 10 defendant to be able to come and go from his business

17:22:51 11 and needs to have no more restriction on 7:30 to 10:30

17:22:56 12 in the morning.

17:22:57 13 MR. COHEN: That's correct, sir.

17:22:58 14 MAGISTRATE JUDGE ROEMER: And you want him

17:22:59 15 to be able to taste test alcohol as part of his

17:23:04 16 business.

17:23:04 17 MR. COHEN: Yes, sir.

17:23:05 18 MAGISTRATE JUDGE ROEMER: Is there anything

17:23:07 19 else or those are the three main things.

17:23:09 20 MR. COHEN: While the second thing you said

17:23:11 21 and while slightly correct, I want him to be able to go

17:23:15 22 to and from his business, I don't want my request to be

17:23:37 23 perceived as that is the only place I'd like to him to

17:23:42 24 be able to visit. I'd like him to be able to simply

17:23:46 25 come and go as he please.

1

17:23:48 2 MAGISTRATE JUDGE ROEMER: Well, on curfew,
17:23:50 3 he would be able to do that.

17:23:51 4 MR. COHEN: Yes.

17:23:51 5 MAGISTRATE JUDGE ROEMER: And he would just
17:23:54 6 need to be home by a certain time.

17:23:55 7 MR. COHEN: That's correct.

17:23:56 8 MAGISTRATE JUDGE ROEMER: So I view that as
17:23:57 9 one of the three things that I just said.

17:24:00 10 MR. COHEN: Right.

17:24:00 11 MAGISTRATE JUDGE ROEMER: But he has a
17:24:01 12 specific condition, a limitation on his ability to go to
17:24:04 13 his business right now.

17:24:05 14 MR. COHEN: Right.

17:24:05 15 MAGISTRATE JUDGE ROEMER: And you want
17:24:07 16 relief from that.

17:24:07 17 MR. COHEN: That's correct, sir. And also
17:24:09 18 he has a limitation on not being able to have alcohol as
17:24:13 19 you probably said.

17:24:13 20 MAGISTRATE JUDGE ROEMER: Okay. I'll hear
17:24:14 21 from you then. You can stay there or come up to the
17:24:18 22 podium. I draw the line at laying down. Okay.

17:24:22 23 MR. COHEN: Thank you, sir. Your Honor
17:24:28 24 we're seeking to amend the condition, conditions of the
17:24:32 25 defendant's release pursuant to 18 U.S.C. Section

1
17:24:34 2 3142(a)(2). The Court must order a release on a
17:24:39 3 person's own recognizance, unless the Court reasonably
17:24:44 4 believes that his being on his own recognizance won't
17:24:50 5 assure his appearance in court or his release will
17:24:54 6 impose a danger to the community. Naturally, 18 U.S.C.
17:24:58 7 talks about nothing contained therein shall in any way
17:25:02 8 affect the presumption of innocence, and, of course, I'm
17:25:05 9 referring to sub chapter (j), which is presumption of
17:25:13 10 innocence. What we have here is a complete absence of
17:25:18 11 any evidence that shows my client is a danger to the
17:25:22 12 community.

17:25:24 13 Judge, I've been doing this a long time.
17:25:27 14 The government has managed to keep my client on a very
17:25:33 15 tight leash on the promise that at some point, they will
17:25:38 16 have evidence or we saw a Facebook post two years ago
17:25:44 17 that suggests my client may have been with a person who
17:25:51 18 put a threat to another person. I have never seen the
17:25:55 19 Facebook post, and it's never been turned over. And Mr.
17:25:58 20 Tripi, I can show where it's located, says, "we're
17:26:02 21 investigating it." If it takes two years to investigate
17:26:05 22 a Facebook post, I suggest there is either nothing there
17:26:09 23 or maybe they need somebody else to investigate it. But
17:26:12 24 I have no evidence that my client poses a threat to
17:26:15 25 anyone, no evidence that he has ever threatened anyone.

1
17:26:18 2 There is, of course, Katrina Nigro, who my office has
17:26:24 3 dubbed "Hurricane Katrina." She is currently in jail,
17:26:28 4 where she belongs. She is -- she goes on the radio and
17:26:32 5 talks about how my client has had poker games in her
17:26:36 6 house. She got the former defense attorney, Joel
17:26:40 7 Daniels, who has been a mentor to me my entire career,
17:26:45 8 and the man is a pillar of ethics, but she got him
17:26:50 9 thrown off the case because of the suggestion that he
17:26:53 10 was somehow playing cards with judges and law
17:26:56 11 enforcement officers in their house, which is something
17:26:59 12 that never happened. She claimed on the radio that Greg
17:27:05 13 Trotter, an Amherst police lieutenant, detective
17:27:10 14 lieutenant, was fired for taking bribes. Detective
17:27:40 15 Lieutenant Trotter was promoted in the Amherst Police
17:27:44 16 and he is in excellent status there, and he will be, at
17:27:46 17 some point, testifying, if they put Katrina Nigro on the
17:27:49 18 stand, that everything she stated was an untruth. And
17:27:55 19 just as Robert Jackson, the namesake of this building,
17:27:58 20 wrote, "Using informers is a dirty business." This is
17:28:03 21 **U.S. v. Prairie**, 572 F 2d 1316, 1978. The Ninth Circuit
17:28:26 22 observed, "by definition, criminal informants are cut
17:28:29 23 from untrustworthy cloth and must be carefully watched
17:28:34 24 by the government and the courts to prevent them from
17:28:47 25 falsely accusing the innocent, from manufacturing

1
17:28:50 2 evidence against those under suspicion of crime, and for
17:28:53 3 lying under oath." **U.S. v. Bernal-Obeso**, 989 F. 2d 331,
17:29:00 4 Ninth Circuit. There is an entire section about the use
17:29:02 5 of informants like Katrina Nigro in this book,
17:29:07 6 Prosecutorial Misconduct, Second Edition, Bennett L.
17:29:12 7 Gershman, section 1:26. There has been no risk of
17:29:15 8 flight shown. Peter is the owner of a home locally,
17:29:21 9 owns a business locally, has a child enrolled in school
17:29:25 10 locally, has spent his entire life here locally, has
17:29:29 11 parents who live locally. He is continuing to invest
17:29:32 12 big money in his home and business with renovations.
17:29:35 13 His 15-year-old son is dependent on Mr. Gerace for
17:29:40 14 transportation to social events. He surrendered his
17:29:44 15 passport and he is pushing hard to get his case to trial
17:29:47 16 because he wants to be exonerated. And if your Honor
17:29:51 17 were a fly in my office, you could hear the phone calls
17:29:55 18 from Peter saying, "When am I getting my trial? When is
17:30:00 19 my case going to trial?" This is not a man that poses a
17:30:20 20 flight risk or seeking is to evade the process. He is
17:30:24 21 on electronic monitoring. He has the largest ankle
17:30:27 22 bracelet I've seen in my career. He has been forced to
17:30:32 23 wear an electronic monitoring, which, under similar
17:30:35 24 circumstances, usually assures that someone remains
17:30:38 25 within the Western District of New York, not in their

1

17:30:41 2 own home. If they are on home confinement, yes. But
17:30:44 3 then there are times when people use ankle bracelets to
17:30:48 4 make sure they stay in the district when they are not
17:30:52 5 100 percent confined find to home. There has been no
17:31:10 6 specific or verifiable threat of any danger by Peter to
17:31:16 7 anyone. Nothing close to the required clear and
17:31:19 8 convincing evidence that the defendant poses a threat to
17:31:22 9 anyone.

17:31:22 10 MAGISTRATE JUDGE ROEMER: Mr. Cohen, I hate
17:31:24 11 to interrupt you, but you seem to be arguing that there
17:31:29 12 should be no conditions that he should be released on
17:31:34 13 his own recognizance. That boat sailed. A judge down
17:31:40 14 in Florida said he should be released on conditions and
17:31:43 15 Judge Sinatra said he should be released on conditions.
17:32:01 16 You're here today to argue about how these conditions
17:32:03 17 should be modified. I'm more than happy to hear you
17:32:06 18 argue today that he shouldn't be put on home detention
17:32:10 19 in the first place, but I'm not going to decide that
17:32:12 20 today; that is not before me. What is before me is
17:32:16 21 modifying the conditions of release.

17:32:18 22 MR. COHEN: I understand that, Judge, but 18
17:32:49 23 U.S.C. 3142 and 3145 give this Court -- gives your Honor
17:32:56 24 very broad discretion and you can, on your own motion at
17:32:59 25 any time change conditions if you feel.

1

17:33:04

2

MAGISTRATE JUDGE ROEMER: That is where we

17:33:05

3

are now. You are asking for the conditions to be

17:33:08

4

changed.

17:33:08

5

MR. COHEN: But if you're asking me and you

17:33:10

6

did, do I think that he should be released, should he

17:33:13

7

have been released on his own recognizance, yes, yes, I

17:33:17

8

do, sir, especially given there has been no evidence

17:33:20

9

presented.

17:33:20

10

MAGISTRATE JUDGE ROEMER: And I totally get

17:33:22

11

that. I totally understand that, but we're not there.

17:33:25

12

He has already had a detention hearing down in Florida

17:33:27

13

and released on conditions and Mr. Daniels sought a

17:33:31

14

modification of those conditions, and Judge Sinatra

17:33:34

15

granted that. Judge Sinatra found that those were the

17:33:38

16

least restrictive conditions necessary to assure his

17:33:41

17

appearance and assure that he is not a danger to the

17:33:44

18

community. So we're already there. And the reason I

17:33:48

19

bring this up, and as you know, you brought it up in

17:33:52

20

your papers, we can modify the conditions at any time,

17:33:55

21

right.

17:33:55

22

MR. COHEN: Yes, sir.

17:33:56

23

MAGISTRATE JUDGE ROEMER: If you want to

17:33:57

24

reopen the detention hearing, that is a different.

17:34:00

25

There is a different standard there. You have to show a

1

17:34:02 2 change in circumstances. And it's a totally different
17:34:05 3 ball game. That is why I started off today, here are
17:34:09 4 the three things you want. Let's try to stick to those
17:34:12 5 three things. If you want to move to reopen the
17:34:16 6 detention hearing, you should do that. But you haven't
17:34:18 7 done it. Okay.

17:34:19 8 MR. COHEN: You're right. You're completely
17:34:22 9 right. The only thing I would respectfully adjust in
17:34:25 10 what your Honor said is, Judge Sinatra didn't say these
17:34:28 11 are the least restrictive measures that would assure his
17:34:31 12 appearance and eliminate his danger to the community.

17:34:51 13 MAGISTRATE JUDGE ROEMER: Geez, I thought he
17:34:53 14 did because there were transcript cites that were in the
17:34:56 15 papers and he said something to the effect that the
17:34:58 16 judge in Florida didn't impose the least restrictive
17:35:02 17 conditions.

17:35:03 18 MR. COHEN: Right, that is what he said.

17:35:05 19 MAGISTRATE JUDGE ROEMER: So I took that
17:35:06 20 then that he then imposed what he thought were the least
17:35:22 21 restrictive conditions, right.

17:35:23 22 MR. COHEN: I think what Judge Sinatra did,
17:35:25 23 as your Honor said, that Judge Valle, V-a-l-l-e, what
17:35:30 24 Judge Valle did was not the least restrictive, so then
17:35:36 25 he imposed these. But I don't know that his Honor made

1

17:35:39 2 the determination that these conditions would be the
17:35:43 3 least restrictive that would assure the appearance.

17:35:48 4 MAGISTRATE JUDGE ROEMER: I think he did.
17:35:51 5 That is what you're supposed to do that is what the
17:35:53 6 statute says you're supposed to do. So, my only point,
17:35:57 7 we're here today to argue, you want certain
17:36:01 8 modifications to the conditions of release. We're not
17:36:03 9 starting over with whether he should be detained or not
17:36:06 10 be detained or what the conditions should be all over
17:36:09 11 again.

17:36:09 12 MR. COHEN: So I would point out, Judge,
17:36:12 13 that he is in complete compliance with all of the terms
17:36:14 14 that have been required of him. The Federal Probation
17:36:18 15 Office stated that he has no concerns at all that the
17:36:31 16 defendant poses a flight risk and has no objections to
17:36:35 17 our requested change in the conditions of the
17:36:37 18 defendant's release from home detention to curfew. And
17:36:41 19 attached to my reply papers at exhibit -- I think it was
17:36:45 20 the last exhibit, is a letter from -- yeah, exhibit D to
17:36:51 21 my reply papers, actually, a letter from Mr. Macaluso,
17:36:55 22 so, stating exactly that.

17:36:57 23 MAGISTRATE JUDGE ROEMER: I've discussed it
17:36:59 24 with Mr. Macaluso, and I -- really, just about 15, 20
17:37:03 25 minutes ago, and he says he has been fully compliant, so

1

17:37:08

2

--

17:37:08

3

MR. COHEN: Judge, I think you've got it. I

17:37:11

4

think you understand my points. I can, you know, run

17:37:14

5

through all of the reasons that I feel that the

17:37:16

6

restrictions placed on Mr. Gerace are unnecessary, and,

17:37:22

7

you'll forgive me, but discriminatory and punitive. And

17:37:25

8

I think Mr. Tripi, you know, has some animus towards my

17:37:32

9

client that I don't have any evidence to support the

17:37:37

10

basis for the animus.

17:37:39

11

MAGISTRATE JUDGE ROEMER: I'll tell you, I

17:37:41

12

don't like when accusations are thrown around. You just

17:37:44

13

said you have no evidence of that other than he is

17:37:47

14

aggressively pursuing this case. And if he said the

17:37:51

15

same thing about you, I would not to like hear it from

17:38:10

16

him.

17:38:10

17

MR. COHEN: I have nothing to support the

17:38:11

18

animus. The things he has done, is a matter of record.

17:38:15

19

Referring the IOC and referring to organized crime,

17:38:19

20

these things are repugnant as a civil rights attorney,

17:38:23

21

but you got it, Judge, and you've heard my arguments and

17:38:28

22

I'm available to respond to any arguments.

17:38:31

23

MAGISTRATE JUDGE ROEMER: Thank you.

17:38:32

24

MR. COHEN: Thank you.

17:38:33

25

MAGISTRATE JUDGE ROEMER: Mr. Cullinane, are

1

17:38:34 2 you arguing?

17:38:34 3 MR. CULLINANE: Yes. Thank you, Judge.

17:38:35 4 MAGISTRATE JUDGE ROEMER: Okay.

17:38:37 5 MR. CULLINANE: Judge, thank you very much.

17:38:46 6 Judge, I want to address some of the things that Mr.

17:38:48 7 Cohen stated on the record. It's clear to me, the Court

17:38:52 8 is very familiar with this case and gone through the

17:38:54 9 docket and is familiar with the procedural history here.

17:38:59 10 In fact, the judge, the defendant appears before Judge

17:39:07 11 Valle down in Miami back in March. And, at that time,

17:39:25 12 Judge Valle said this is an interesting case, in fact, I

17:39:29 13 would order you detained if not for the government's

17:39:32 14 motion at that time. And the government has explained

17:39:35 15 its position and why it took that position at time and

17:39:39 16 asked for, rather than detention, restrictive

17:39:42 17 conditions. And the government did not oppose home

17:39:44 18 detention at that time. The defendant then appears

17:39:47 19 before you and there is an order setting conditions of

17:39:49 20 release on the record, in which your signature is on and

17:39:53 21 it contains information about the conditions imposed

17:39:56 22 upon Mr. Gerace, which include, among other things,

17:40:00 23 electronic monitoring for home detention and he ordered

17:40:06 24 that he not imbibe any alcohol. What coincides around

17:40:09 25 the same time is the fact that when this defendant

1

17:40:12 2 appeared before Judge Valle down in Miami, the probation
17:40:17 3 report stated he had used cocaine one year earlier than
17:40:20 4 that date. Turned out he had cocaine in his system at
17:40:24 5 that time and he had lied to the probation office. Had
17:40:27 6 our had our office known then at that time. That would
17:40:31 7 have changed our position.

17:40:32 8 MAGISTRATE JUDGE ROEMER: Mr. Cullinane,
17:40:34 9 same thing to you that I told to Mr. Cohen. We're here
17:40:37 10 now. We're going forward. Both people seem to want to
17:40:43 11 go backwards to what happened in Florida or what
17:40:46 12 happened after that. And as far as this testing
17:40:50 13 positive for cocaine, I assume that was brought up to
17:40:53 14 Judge Sinatra.

17:40:54 15 MR. CULLINANE: It was, it was in the
17:40:55 16 papers.

17:40:56 17 MAGISTRATE JUDGE ROEMER: Okay. Then he had
17:40:57 18 that. He made his decision.

17:41:01 19 MR. CULLINANE: You're exactly right, and
17:41:02 20 Judge, I mention that for this fact, and I'll get right
17:41:05 21 to the point here. Mr. Gerace would like to change his
17:41:11 22 conditions from home detention to curfew. This
17:41:15 23 defendant has demonstrated throughout his history here
17:41:17 24 and all of his characteristics that that is not
17:41:20 25 appropriate. We went before Judge Sinatra, and you're

1

17:41:24 2 exactly right of your memory of the transcript, which I
17:41:27 3 have in front of me. Judge Sinatra stated, "After
17:41:29 4 reviewing the record and after hearing from both sides,
17:41:33 5 the lesser restrictive condition that he refrain from
17:41:42 6 visiting or working at Pharaoh's, except between certain
17:41:48 7 designated hours, serves the purpose of Title 18 U.S.C.
17:41:57 8 Section 3142(c)(1)(B)." This issue has been up before
17:42:01 9 Judge Sinatra in the past. There is nothing that has
17:42:04 10 changed since the parties appeared before Judge Sinatra
17:42:07 11 regarding Mr. Gerace and any --

17:42:09 12 MAGISTRATE JUDGE ROEMER: I think Mr. Cohen
17:42:11 13 argues two things that have changed. One is he has now
17:42:16 14 reviewed all of the discovery in the case and he
17:42:18 15 believes the case is much weaker than he thought it was
17:42:21 16 even before he started looking at it. That is his one
17:42:25 17 argument. And the second argument is there has been
17:42:27 18 compliance for the last seven months. Those are, I take
17:42:30 19 it, are the two arguments as to why the conditions
17:42:33 20 should be released.

17:42:34 21 MR. CULLINANE: Let me address those. First
17:42:35 22 of all, he has not reviewed all of the discovery and we
17:42:39 23 have not provided Jencks material in this case. There
17:42:53 24 is an offense reference to a woman named Katrina Gerace,
17:42:58 25 which he called "Hurricane Katrina." He has no

1
17:43:12 2 information regarding her from us of whether there is
17:43:15 3 Jencks material or not, which I'm not going to confirm
17:43:19 4 on the record, but Jencks material has not been provided
17:43:34 5 to his office. So, in his papers, he alleges perjury
17:43:37 6 and false statements and other things. As far as I
17:43:45 7 know, Katrina Gerace is not charged in this courthouse
17:43:48 8 or elsewhere in this district with any federal
17:43:52 9 violation. So, for him saying that, that is not exactly
17:43:55 10 correct, and he is attempting to mislead the Court from
17:43:59 11 the character and background of Mr. Gerace and the
17:44:02 12 charges in which he faces, five of which are very
17:44:16 13 serious, and involve a former co-defendant, a former DEA
17:44:22 14 special agent, and rather, he is trying to talk about
17:44:31 15 this other person and trying to make the Court believe
17:44:34 16 this one case rests on one person. I can tell you,
17:44:39 17 Judge, in a proffer to this case, this case involves
17:44:42 18 numerous witnesses, and it's inappropriate and improper
17:44:46 19 to attempt to bludgeon the name of this one person on
17:44:57 20 some unfounded belief that this person committed some
17:45:01 21 sort of violation, whether before this Court or a grand
17:45:05 22 jury. That, in fact, has not happened, so it's an
17:45:08 23 attempt to move away from the record before your Honor.
17:45:13 24 Second, your Honor, there is information
17:45:16 25 about compliance. And I know that Mr. Macaluso has

1

17:45:19 2 filed a report and you had an opportunity to speak with
17:45:22 3 him. I'm not so sure that is correct that there has
17:45:25 4 been full compliance, and my concern stems from, your
17:45:28 5 Honor, the motion that was put in as well as the
17:45:32 6 response that we filed. Mr. Cohen then filed a reply
17:45:38 7 and he said, well, Mr. Gerace is allowed to speak with
17:45:45 8 people from Pharaoh's, just not while he is at
17:45:49 9 Pharaoh's. Your Honor, I have the transcript which I
17:45:52 10 believe you have at docket 118.

17:45:56 11 MAGISTRATE JUDGE ROEMER: Before you go down
17:45:58 12 this road, Mr. Cullinane, I called Judge Sinatra and I
17:46:01 13 asked him --

17:46:02 14 MR. CULLINANE: Yes.

17:46:03 15 MAGISTRATE JUDGE ROEMER: -- what his
17:46:03 16 position is. And he had no problem with the employees
17:46:07 17 going over to Mr. Gerace's house or talking to him on
17:46:10 18 the phone, just not at the establishment. So that is
17:46:14 19 where I am.

17:46:15 20 MR. CULLINANE: Well, I actually appreciate
17:46:16 21 the fact that you talked to Judge Sinatra. Because I
17:46:19 22 have to tell you, it's a little confusing, but I think
17:46:22 23 the language was not exactly clear for us. It seemed on
17:46:26 24 the face of it he would leave a checklist for the
17:46:29 25 manager.

1

17:46:29 2 MAGISTRATE JUDGE ROEMER: I understand your
17:46:30 3 position completely.

17:46:31 4 MR. CULLINANE: So, to let you know, that is
17:46:33 5 where we're coming from. I'm not trying to mislead
17:46:36 6 anyone. That was our understanding.

17:46:37 7 MAGISTRATE JUDGE ROEMER: Yes.

17:46:38 8 MR. CULLINANE: Nevertheless, your Honor,
17:46:40 9 compliance is not a changed circumstance. This issue of
17:46:43 10 Pharaoh's and whether he needs to meet with people
17:46:46 11 there, whether construction workers or other venders, or
17:46:49 12 whatever, this update to Pharaoh's, that is not a
17:46:52 13 changed circumstance. And, in fact, what Judge Sinatra
17:46:55 14 said in the transcript, and which I believe he
17:46:57 15 referenced in his Webmaster, he said this transcript
17:47:01 16 will serve as well of documentation of the decision is
17:47:04 17 the fact that Mr. Gerace had an issue that came up,
17:47:09 18 rather than put anything in doubt, contact Mr. Macaluso
17:47:13 19 and work with probation, which has always been the case
17:47:16 20 that people should contact the probation officer first.
17:47:19 21 They are well trained and they can handle this. And he
17:47:25 22 can then work with probation to try and accommodate his
17:47:28 23 schedule and if there is some off schedule with one
17:47:31 24 contractors. That is still available to Mr. Gerace to
17:47:42 25 do. Nothing has changed the meantime since we came

1

17:47:45 2 before Judge Sinatra on this very issue.

17:47:49 3 Let me add as well, the defendant's own
17:47:52 4 determination, own evaluation, own review of the case is
17:47:55 5 also not a changed circumstance. Simply because Mr.
17:47:59 6 Cohen, and, Judge, I think for the record, obviously you
17:48:01 7 know this, but just simply because Mr. Cohen to date has
17:48:05 8 reviewed some discovery, but not everything, as I said,
17:48:09 9 Jencks has not been turned over, that doesn't mean there
17:48:12 10 say changed circumstance in this case. What is still
17:48:15 11 outstanding, Mr. Gerace has an indictment with five
17:48:30 12 charges against him and co-conspirators, and all of
17:48:31 13 which are serious, some more serious than others. His
17:48:35 14 background, which has been problematic throughout this
17:48:38 15 time and there are no changed circumstances today that
17:48:49 16 should dictate any change in what Judge Sinatra has
17:48:52 17 already ordered. Again, he went before Judge Valle and
17:48:56 18 you and Judge Sinatra, he is under the least restrictive
17:49:00 19 conditions that are imposed today, and shall not be
17:49:11 20 amended for any purpose.

17:49:13 21 I'll rely, again, your Honor, on our filing
17:49:15 22 papers, there is more information there, but I know
17:49:18 23 you're familiar with this case.

17:49:20 24 While I have the floor, though, and you'll
17:49:23 25 tell me if you want me to continue, the government also

1

17:49:25 2 made a cross motion though regarding the removal of
17:49:40 3 earned leave. I don't know if you want to be heard at
17:49:44 4 this time on that.

17:49:45 5 MAGISTRATE JUDGE ROEMER: Sure, go ahead.

17:49:46 6 MR. CULLINANE: Judge, as we put in the
17:49:48 7 papers, the government was not aware at the time and
17:49:51 8 that is, obviously, in March of 2021, that while someone
17:49:55 9 is on home detention, they can acquire what is called
17:49:58 10 earned leave, and it's only been the last couple of
17:50:01 11 months that I can tell you Mr. Tripi and I have learned
17:50:05 12 about that. And as I footnoted in our response and in
17:50:08 13 the cross motion section, we conferred with AUSA Tim
17:50:13 14 Lynch, Joe Guerra, and the former U.S. Attorney JP
17:50:16 15 Kennedy, none of whom knew about this opportunity for
17:50:20 16 the defendants to apply earned leave. This is new
17:50:22 17 information to us. It's not in the four corners of the
17:50:25 18 order setting conditions of release. I've since had an
17:50:29 19 opportunity to review and become aware of documents that
17:50:35 20 are signed between the defendant himself and the
17:50:37 21 probation officer that document how a defendant
17:50:39 22 understands that he can acquire, he or she can acquire
17:50:43 23 earned leave during the course of their being on home
17:50:47 24 detention. Those are not documents that the government
17:50:49 25 is a party to. So I'm providing some information and

1

17:50:52 2 background that none of us knew and in fact of the
17:50:56 3 persons I mentioned I'm the least experience but you
17:50:58 4 have people obviously like Joe Guerra and JP Kennedy,
17:51:03 5 nearly 30 years in the office, on this opportunity of
17:51:07 6 earned leave. And, Judge, we're obviously opposed to
17:51:11 7 any modification to curfew at this time. But we're also
17:51:15 8 asking that earned relief be removed from Mr. Gerace.

17:51:19 9 MAGISTRATE JUDGE ROEMER: I can tell you the
17:51:20 10 leave program has been in existence over 20 years here
17:51:24 11 in this court. I hear you that maybe you didn't know
17:51:27 12 about it. I discussed it with probation about, you
17:51:32 13 know, educating everyone about this program. It's been
17:51:35 14 around for a long time. So, but I'm not going to remove
17:51:42 15 -- the program is in existence, he is eligible for it,
17:51:46 16 he gets it. I'm not changing the program or taking him
17:51:50 17 out of it at this time.

17:51:51 18 MR. CULLINANE: Judge, I ask you to consider
17:51:52 19 the fact, as we put in the moving papers, the fact that
17:51:55 20 we've become aware that he has been in places that have
17:51:59 21 been part of the investigation in which criminal conduct
17:52:03 22 has occurred. As a result, we're asking to you
17:52:05 23 seriously consider --

17:52:06 24 MAGISTRATE JUDGE ROEMER: I'll let you do
17:52:07 25 this, if you want to submit to Court and the counsel a

1

17:52:10 2 list of places you don't think he should go, I'll listen
17:52:13 3 to that, or whatever. But the only limitation on the
17:52:19 4 earned leave, it says, specifically, you can't go to a
17:52:23 5 bar or any place where its primary activity is serving
17:52:28 6 alcohol. There are no other limitations. So, if you
17:52:33 7 want to tell me, okay, he shouldn't be able to go here,
17:52:38 8 there or whatever, I'll consider that. But I'm not
17:52:41 9 taking him off the program. Okay?

17:52:44 10 MR. CULLINANE: Judge, finally, the
17:52:46 11 government put in a motion for GPS data relating to Mr.
17:53:00 12 Gerace since he has been on this home detention.

17:53:03 13 MAGISTRATE JUDGE ROEMER: When they go on
17:53:04 14 home detention, particularly Mr. Gerace, was on GPS,
17:53:16 15 there is a record of where he went. Probation office
17:53:18 16 has reviewed that. If he didn't go where he was
17:53:21 17 supposed to go, they would have violated. And that
17:53:26 18 didn't happen and they informed me he went where he said
17:53:30 19 he was going to go.

17:53:37 20 MR. CULLINANE: And I understand. And,
17:53:39 21 Judge, that would be, as I think I heard you, that would
17:53:41 22 be, if he went, for example, a bar, which is a place
17:53:44 23 that primarily serves alcohol for only that purpose.

17:53:48 24 MAGISTRATE JUDGE ROEMER: If they say, you
17:53:49 25 can go to this restaurant, this restaurant here, and you

1

17:53:52 2 can eat dinner. If it shows that he didn't go to that
17:53:56 3 restaurant and went to another location, he would be in
17:54:01 4 violation.

17:54:08 5 MR. CULLINANE: Correct.

17:54:08 6 MAGISTRATE JUDGE ROEMER: That didn't
17:54:09 7 happen.

17:54:09 8 MR. CULLINANE: Correct.

17:54:10 9 MAGISTRATE JUDGE ROEMER: Okay.

17:54:11 10 MR. CULLINANE: And we're not asking for a
17:54:13 11 violation of probation rules, we're asking because of
17:54:15 12 our investigation --

17:54:16 13 MAGISTRATE JUDGE ROEMER: I'm denying your
17:54:17 14 request. Okay.

17:54:18 15 MR. CULLINANE: Thank you, Judge.

17:54:19 16 MAGISTRATE JUDGE ROEMER: All right.

17:54:20 17 Anything else then, Mr. Cullinane?

17:54:21 18 MR. CULLINANE: Not at this time, your
17:54:24 19 Honor. Thank you.

17:54:24 20 MAGISTRATE JUDGE ROEMER: Mr. Macaluso or
17:54:26 21 Officer Macaluso?

17:54:27 22 PROBATION: Yes, your Honor. In terms of
17:54:29 23 our office, we submitted a memo to the court dated
17:54:33 24 October first. The defendant has been in compliance
17:54:35 25 with his conditions of release for his seven months on.

1

17:54:39 2 We have no objection with him going from home detention
17:54:43 3 to curfew staying on electronic monitoring with all
17:54:46 4 conditions to remain.

17:54:49 5 MAGISTRATE JUDGE ROEMER: Okay. You have no
17:54:50 6 objection if he goes from home detention to curfew.
17:54:53 7 What about going to his business?

17:54:57 8 PROBATION: The business, your Honor, that
17:54:59 9 would be up to your Honor. I did tell the defendant
17:55:02 10 that and I told Mr. Cullinane that if you wanted him
17:55:06 11 there at a certain time, I could put a zone around the
17:55:09 12 business and he could only be there for a certain time.
17:55:12 13 If he was on curfew from 7 to 7 and you only warranted
17:55:16 14 him at the business from 7 a.m. to noon, I could put a
17:55:20 15 zone around the business so we would be notified if he
17:55:24 16 stayed there any longer.

17:55:25 17 MAGISTRATE JUDGE ROEMER: I have to ask. Is
17:55:27 18 his ankle monitor any bigger than anybody else's ankle
17:55:32 19 monitor?

17:55:33 20 PROBATION: No, your Honor. It's a standard
17:55:36 21 GPS. It's not bigger or smaller. There is a smaller
17:55:39 22 unit, but it's RF, but he is on GPS and so it's a little
17:55:45 23 bit bigger.

17:55:45 24 MAGISTRATE JUDGE ROEMER: Mr. Cohen.

17:55:46 25 MR. COHEN: Briefly, sir. The place where

1
17:55:49 2 my client went which was of concern to his U.S.
17:55:54 3 Attorney, he went with his parents to the casino for
17:55:59 4 gambling, which he had permission to do. With regard to
17:56:02 5 the suggestion by the AUSA that there was no perjury and
17:56:07 6 since they didn't turn over the 3500 material to me, how
17:56:11 7 would I ever know? Ms. Nigro went on the radio and on
17:56:17 8 social media and posted the things that she testified to
17:56:20 9 the grand jury about. And if this Court has any doubt
17:56:24 10 as to whether Ms. Nigro committed perjury, we would
17:56:28 11 welcome a hearing. And my first witness will be Joel
17:56:32 12 Daniels. Lastly, Judge, well second to last, there are
17:56:37 13 scores of camera at the club at Pharaoh's on 999 Aero
17:56:44 14 Drive. My client is not -- the government has not only
17:56:51 15 seized all of the footage, but we can do one better,
17:56:55 16 they can have live stream and they can watch what goes
17:57:05 17 on at the club. And if they think there should be an
17:57:08 18 additional camera, although I think almost every quare
17:57:12 19 inch of that place is covered except the bathrooms,
17:57:16 20 Peter will put in cameras. They are welcome to monitor.
17:57:21 21 Also, their claims, tens of thousands of materials that
17:57:25 22 they have against my client, if this were a civil case,
17:57:36 23 that would be sanctionable trying to bury the other side
17:57:39 24 with nonsensical alleged evidence. But everything they
17:57:44 25 turned over to me, tens of thousands of pages, I had an

1

17:57:48 2 army at my office go through it. And as the government
17:57:53 3 concedes, there was nothing there. I'd like some of
17:57:56 4 that evidence that that will be the basis for another
17:58:00 5 motion, but the claim that --

17:58:03 6 MAGISTRATE JUDGE ROEMER: Well, we've
17:58:05 7 already filed motions in the case.

17:58:06 8 MR. COHEN: I beg your pardon?

17:58:08 9 MAGISTRATE JUDGE ROEMER: We've already
17:58:09 10 filed motions in the case, so any motion now would be
17:58:13 11 untimely. I have the pretrial motions in front of me
17:58:15 12 now.

17:58:16 13 MR. COHEN: I see. But I've been screaming
17:58:19 14 in from the rafters in the motions that have been filed,
17:58:23 15 I want the evidence that they have. And if they are
17:58:26 16 saying there is no other evidence than the Jencks.

17:58:29 17 MAGISTRATE JUDGE ROEMER: The discovery rule
17:58:31 18 does not say you have to turn over all evidence in your
17:58:35 19 case, that is not the case, that is not what the rule
17:58:44 20 says. There are certain types of evidence they have to
17:58:46 21 turn over. They don't have to turn over all their
17:58:49 22 evidence. They don't have to try their case before they
17:58:52 23 try their case.

17:58:52 24 MR. COHEN: I understand, your Honor. But
17:58:54 25 we also, this Court has a long and rich history of

1

17:58:58 2 rejecting trial by ambush. And this Court has many
17:59:02 3 times said, you know, the rules for turning over Jencks
17:59:06 4 and Giglio and things after the jury has been sworn and
17:59:14 5 this Court has said no, no, no. Give the defense plenty
17:59:18 6 of time to review this. We usually get things well
17:59:21 7 before. But, in my case, I have nothing except an
17:59:24 8 indictment and the tens of thousands of pages that show
17:59:27 9 no criminality. So, I'm a little bit in the dark with
17:59:32 10 this entire case, and I think your Honor gets that.
17:59:35 11 With that, Judge, I rely on my papers for the balance of
17:59:39 12 my position.

17:59:39 13 MAGISTRATE JUDGE ROEMER: Thank you, sir.

17:59:40 14 MR. COHEN: Thank you.

17:59:41 15 MAGISTRATE JUDGE ROEMER: Mr. Cullinane,
17:59:41 16 anything?

17:59:42 17 MR. CULLINANE: Just very briefly, your
17:59:44 18 Honor. Thank you. Judge, just as to the last point
17:59:49 19 raised by Mr. Cohen. The government has complied with
17:59:53 20 its responsibilities and requirements for discovery,
17:59:56 21 and, in particular, I referenced Jencks material, that
18:00:00 22 was not required to be turned over at this time. And
18:00:10 23 that is what I was referring to earlier. Other than
18:00:12 24 that, we have complied with everything and they have
18:00:16 25 everything in their hands.

1

18:00:19 2 MAGISTRATE JUDGE ROEMER: By statute you're
18:00:20 3 not required.

18:00:21 4 MR. CULLINANE: Correct. We have complied.
18:00:23 5 Two brief points, I want to make sure and just to be
18:00:26 6 clear, I don't believe anything has changed between the
18:00:29 7 time we appeared before Judge Sinatra and today. Judge
18:00:33 8 Sinatra, essentially, has already looked at this issue
18:00:35 9 and made a determination on this and the government
18:00:37 10 submits there is nothing to be changed today in terms of
18:00:40 11 home detention.

18:00:41 12 MAGISTRATE JUDGE ROEMER: Let's just be
18:00:42 13 clear, and this, again, goes back to how we started off
18:00:46 14 this argument. Mr. Cohen, basically, I think, was
18:00:48 15 arguing that he should not be detained, should not be on
18:00:52 16 any type of conditions. I said, well, that
18:00:55 17 determination has already been made. The statute says I
18:01:00 18 can modify those conditions. If you wanted to say now I
18:01:06 19 want him detained, then you have to show a change of
18:01:08 20 conditions. Right?

18:01:10 21 MR. CULLINANE: Correct.

18:01:10 22 MAGISTRATE JUDGE ROEMER: I think those are
18:01:11 23 two different parts of the statute. And I think they
18:01:14 24 are different. I think you don't necessarily have to
18:01:17 25 show that anything changed in order to modify the

1

18:01:20 2 condition. I mean, that would generally be a reason why
18:01:23 3 it would be something changed or whatever. But that is
18:01:26 4 not that part of the statute, right?

18:01:28 5 MR. CULLINANE: What is permissible here is
18:01:30 6 that you have discretion and in terms of them presenting
18:01:33 7 information to you regarding Mr. Gerace, nothing has
18:01:36 8 changed that should dictate that there should be, within
18:01:41 9 your discretion, a change in any circumstances, that
18:01:52 10 Judge Sinatra, essentially, already heard about -- heard
18:01:54 11 from the parties, reviewed, asked great questions about
18:01:57 12 and made a determination at the end about. For those
18:02:00 13 reasons, the government submits there should not be any
18:02:03 14 change from home detention to curfew.

18:02:06 15 Finally, Judge, you know, I just want to
18:02:09 16 raise this issue, though, and I heard your order before
18:02:12 17 about the fact that if we want to make a motion, ask for
18:02:16 18 the list of places where he has been, Judge.

18:02:19 19 MAGISTRATE JUDGE ROEMER: No, no, no. What
18:02:20 20 I said was you can make a motion saying he shouldn't be
18:02:24 21 able to go to these places. I didn't say make a motion
18:02:29 22 to find out where he had been. That is not what I said.

18:02:33 23 MR. CULLINANE: Well, and I probably
18:02:34 24 misunderstood that. Let me say that, regardless, either
18:02:39 25 where he is has been or where he is going, that is part

1

18:02:42 2 of the Government's investigation that is admittedly
18:02:46 3 continuing and the government is not interested and
18:02:49 4 would prefer not to publically acknowledge these
18:02:52 5 locations as part of its investigation. So we ask that
18:03:03 6 is something we wouldn't have to place publically.

18:03:06 7 MAGISTRATE JUDGE ROEMER: It's difficult for
18:03:07 8 me to tell him not to go somewhere if you don't tell me
18:03:14 9 where it is.

18:03:15 10 MR. CULLINANE: Judge, we don't mind telling
18:03:17 11 you. At this time, we don't want to publically
18:03:20 12 acknowledge that and provide that information to him
18:03:31 13 without it first being determined by this Court. We
18:03:34 14 don't want to put that on a public docket so that the
18:03:39 15 defendant and counsel could see this. We're asking that
18:03:42 16 is something that could be done under seal, ex parte, to
18:03:46 17 the Court.

18:03:46 18 MAGISTRATE JUDGE ROEMER: No.

18:03:48 19 MR. CULLINANE: Thank you, Judge.

18:03:49 20 MAGISTRATE JUDGE ROEMER: All right. I'll
18:03:51 21 consider the matter submitted. Have a good day and stay
18:03:54 22 safe.

18:03:56 23 MR. COHEN: Thank you, Judge.

24

25

* * *

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
of the record to the best of my ability of proceedings
transcribed from the audio in the above-entitled matter.

S/ Karen J. Clark, RPR

Official Court Reporter